

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
May 8, 2014

Meeting called to order at 6:03 p.m.

Board Members Present: Tom Emerson, Karen Kalmar, Deborah Driscoll Davis Davis, Susan Tuveson, Mark Alesse, Bob Melanson, Ann Grinnell

Members absent: none

Staff: Gerald R. Mylroie, AICP, Town Planner; Chris DiMatteo, Assistant Planner

Pledge of Allegiance

Minutes:

April 24, 2014

Mr. Melanson moved to accept the minutes of April 24, 2014 as amended

Ms. Kalmar seconded

Motion carried with 6 in favor; 0 opposed; 1 abstention(Grinnell)

Public Comment: None

ITEM 1 – Watts Cluster Subdivision – Brave Boat Harbor Road — Sketch Plan Review

Action: Review, schedule site walk if warranted, approve concept if in compliance with Town Code and provide direction to Applicant Owner and Applicant Jonathon & Kathleen Watts is requesting consideration of their plans for a 4-lot cluster subdivision at 143 Brave Boat Harbor Road, Tax Map 63, Lot 19, Residential Rural Zone, with a portion in the Shoreland Overlay Zone. Agents are Ken Markley, Easterly Surveying, Inc., and Scott Anderson, Verrill Dana, LLP.

Scott Anderson, Attorney, discussed the application of the Soils Guide for this proposal and the allowance for dimensional modifications in a cluster subdivision application.

Ken Markley, Easterly Surveying: A High Intensity Soil Survey was used to calculate useable soils to determine lot numbers, with enough buildable area to create 6 lots. Using the Soils Guide and following the ordinance, including the removal of roads, flood plain areas, scantic soils and lyman rock outcrop outside of the floodplain area, etc., the total buildable lot area allowed would be 4.17 lots. They are proposing 4 lots, total.

Ms. Kalmar: Are any of the test pits in soils area listed in the Soils Guide? Ordinance references the guide in the septic code.

Mr. Markley: Lot 2. The state allows septic design if the soils are deep enough and of certain texture. A common system can be designed for this lot.

Ms. Driscoll: Is the 1984 flood plain boundary shown current? If new maps impact the area, is concerned about impact following construction.

Mr. Markley: Yes. The proposed flood zone boundaries do not affect inland flood plains. Proposed location of homes are 15-20' higher than the road, and only reason the flood area is noted is because of the road.

Ms. Grinnell: What standard is used for the shoreland zone? Are waivers required?

Mr. Markley: Development must be located 250' from upper edge of freshwater wetland adjacent to a protected stream. Entire lot is in shoreland overlay zone; resource protection zone in flood area. The town's overlay maps are incorrect. Proposal is based on 40,000 sf per lot, as required in shoreland zone. No waivers are requested, unless the proposed hammerhead is not acceptable.

Mr. DiMatteo: Because new flood maps will not be adopted until mid-2015, the Board can only focus on existing maps.

Ms. Kalmar: Asked about shoreland overlay standards / shore frontage.

Mr. DiMatteo: Non-forested wetlands of 10 acres or more places them in shoreland zone per minimum state standards. Town code states if there is a protected stream associated with the fresh water FRESH wetlands as per Kittery's Zoning Map, the area is located in the shoreland overlay zone. State standards require minimum lot area of 40,000 sf, but the town already requires a base zone of 40,000 sf. Under cluster development, they are proposing a minimum of 20,000 sf per lot. The Board may need to consider whether the applicant has provided an additional 20,000 sf per lot in open space, as required by the state in cluster development in the shoreland zone. Septic systems also require a minimum lot size of 20,000 sf. There does not appear to be any issues regarding lot size in the shoreland zone. Discussion followed regarding use of the Soils Survey guide and its application on current proposals before the Board pending ordinance amendments.

Ms. Wells: Referenced letter from Gabriele Burke, abutter (attached), regarding flooding issues and buffers.

Mr. Markley: Ms. Burke's lot is a quite small, nonconforming. A fence and vegetated buffer is proposed. The grading of lot 2 will be graded to prevent additional water runoff onto her lot. Because they are at the maximum area for lots, they cannot provide her with additional land area.

Mr. Alesse: Asked for a deeper vegetated buffer and a list of materials proposed for the buffer.

Mr. Melanson moved to accept the sketch plan of the Watts cluster subdivision and schedule a site walk.

Ms. Tuveson seconded

Ms. Grinnell asked about the attorney's reference to potential bias or conflict of interest regarding recusal of Board members.

Ms. Kalmar: Stated she has no bias, and has not prejudged this plan. She will review and apply the code fairly to all proposals in front of Board.

Mr. Alesse: Stated he has no bias against managed development, and will follow the spirit of the Comp Plan. He has no objection if the proposal fits within the parameters of the law.

Mr. DiMatteo suggested the motion be modified to 'accept the application'.

Mr. Melanson modified his motion to accept the application.

Ms. Tuveson seconded

Motion carried unanimously

A Site walk was scheduled for Wednesday, June 4 at 6:00 p.m.

ITEM 2 – Board Member Items / Discussion

Ms. Grinnell: Discussion regarding Council workshop scheduling and discussion items; review of shoreland amendments would need to be reviewed as a whole at the second meeting in May before Council workshop on June 2. The Board agreed to follow a process for taking amendments to Council; referencing the outdoor seating amendment, this item needs to follow the agreed upon decision to review amendments by the process;

Ms. Kalmar: Agrees a process needs to be followed; this is Title 5, not Title 16, and suggests removing the Planning Board name to send to Council now. Ms. Driscoll suggested the Foreside groups return to the Board in the fall to resolve any issues that may have arisen with this amendment over the summer.

Mr. Emerson will present to Council. The Board agreed to recommend the amendment not be extended the amendment beyond 12/31/14.

Mr. Emerson: The outdoor seating issue is a temporary issue, with a sunset period. Similarly, the Dennett Road proposal appears temporary, but believes it is a Planning Board, not Council, issue.

Mr. Mylroie: A neighborhood meeting was held on April 30, with an upcoming meeting on 5/13 at Traip Academy. The ball is in the applicant's court. Discussion followed regarding one-time events and who is responsible for permitting.

ITEM 3 –Town Planner Items:

- A. MS4 Stormwater; Board asked to complete and return survey and requested Jessa Kellog present on this topic at the May 22, 2014 meeting.
- B. Town Code Quality Improvement Overlay Zone;
- C. Memorial Circle Plan – Status; MDOT design work is continuing, and will return with final plan for Board review; signage remains an issue.
- D. Kittery Foreside;
- E. Signs / Seapoint / Crescent Beach Signs; too many signs; working on an information sign at locations. Ms. Wells noted the sign would like the sign not be located in the salt marsh.
- F. FEMA – Flood Insurance Risk Maps Status: updates ongoing; Council will decide whether to appeal.
- G. Library Location: discussion regarding moving of library to the Community Center; discussions are ongoing.
- H. Capital Improvement Program Projects: List of projects in packet.
- I. Town Code Outdoor Seating Program Extension:
- J. Other: June 2 @ 6:00 workshop w/ Council to discuss ordinance amendments; further discussion of amendment items proposed for Council discussion at 5/22 meeting; update Council on Board's action list;
- K. Kittery By-Pass: Committee wishes to continue with Kittery Gateway brand name. Ms. Grinnell: This should be discussed further in Council workshop.
- L. Sign ordinance: Ms. Grinnell asked about the group working on the sign ordinance, and wishes to hear from the CEO; Mr. Mylroie: proposed ordinance amendments will be presented to the Board regarding nonconforming signage; Public Hearing will be held regarding sign design; Mr. Emerson: will want input from the CEO on the ordinance proposal;

NEW BUSINESS

ITEM 4 – Pearson Meadow Cluster Subdivision – Completeness Review of Final Plan Application.

Action: Accept or Deny Final Plan Application, Owner Gail Beverly Burns and applicant Chinburg Builders, Inc, is requesting consideration of their plans for a cluster subdivision to include nine new lots and one reserved lot on a 24.5 acre parcel located at 60 Wilson Road., Tax Map 54, Lot 14, within the Residential-Rural Zone and Resource Protection Overlay Zone. Agent is Jeff Clifford, P.E., Altus Engineering, Inc.

Ms. Kalmar recused herself as she had not participated in any prior deliberations, the Public Hearing, or attended the site walk.

Board members agreed

Ms. Kalmar stepped down

Jeff Clifford, Altus Engineering, introduced Paul Kerrigan, Chinburg Builders; Scott Gove; Ron Beal, Altus; Jason Howe, Attorney.

Application history summarized. Owner has a purchase and sale agreement with Chinburg Builders. Preliminary approval received on 9/12/13. DEP review process followed; Tier 1 wetland crossing permit received. Summary of plan:

- Stormwater management: Including buffer easements for lots 1-4, underdrain soils filters (2) placed along southern lots (5-9) for lot and cul-de-sac/road drainage; landscaped buffers along the roadway collect runoff; berms located along easterly development.
- Buffer widened along easterly property line; fencing and additional landscaping proposed at curve of road abutting Devons Woods development.
- NRA calculations: upland soils identified not suitable (Elmwood) were eliminated from net residential area calculations, yielding a possible 14-lot development.

- Sufficient reserve septic areas were shown on a prior plan; reserve septic areas not identified on each lot will be illustrated on final plans.
- Modifications: 50' ROW proposed instead of 60'.
- Common open space removed from DEP stormwater buffer per the DEP; buffer restrictions included in covenants.
- Roadway: 20' paved road has an additional 6'-wide shoulder for pedestrian access to Wilson Road; owner's driveway is existing, historical, and part of a scenic roadway (Wilson Road); a no-cut wooded buffer is proposed along Wilson Road, between owner's driveway and proposed cluster minor street; a waiver will be needed for the road access to Wilson Road.
- Wetland crossing totals 4,208 sf; box culvert proposed for wildlife access to adjacent wetlands to the north and south. Mr. Emerson requested identification of crossing on Sheet C-3.
- The Army Corps of Engineers (ACOE) requires a 100' vernal pool buffer; the DEP did not classify the area as a significant vernal pool, but as a wetland; ACOE required road be located north of the vernal pool, abutting Devons Woods.
- Kittery Fire Department had no issues; DPW had no issues with road, re: site lines; CMA noted requested modifications were appropriate for a cluster subdivision; additional modification for cul-de-sac radius needs to be submitted.
- Plant species and sizes will be provided prior to final plan approval.
- Mitigation: Not a large wetlands crossing, proposal provides a large buffer and box culvert; identified as a wooded wetland, not a highly classified wetland; \$16,800 fee for crossing; ordinance targets fees be used on lot; in lieu of using fees on site, proposes use of fees by the town;
- Wells located in woodland buffer; DEP stated this can be done, with restrictions (information will be provided to the town);
- Miscellaneous housekeeping issues per staff comments; Performance Guarantee will be provided when needed; proposed road name application provided;

Earldean Wells: Identification of all proposed landscaping be included in plan; mitigation should be provided on site, not the impact fees.

Mr. Emerson: Extend no-cut easement closer to barn area along Wilson Road.

Discussion followed regarding common areas/open space, potential trail network in open areas; pedestrian access to Wilson Road; determination of net residential acreage; fence and buffer location; site distances along Wilson Road; removal of hemlock per request of abutter (McNeil; attached).

Mr. DiMatteo: Location of underdrain filters in no-cut buffer area.

Mr. Clifford: This is a meadow area with no trees; the MDEP has reviewed and approved the proposed locations, based on the overall stormwater management plan.

Waivers:

1685.1.3 (a. b.) - Scale: Drawing scale 1"=60 feet for existing conditions and topographic plan; 1"-50' horizontal and 1"=10' vertical for subdivision and lot, and plan and profile plan. The larger scale reduces the numbers of sheets and coincides with the subdivision and lot plans while having a scale that is easily readable.

6 in favor; 0 abstained; 0 opposed

16.8.44.6.G - Cluster subdivision access onto a public road: The proposed 9 cluster lots will have access only onto the proposed roadway. The current property owner is retaining a 5+ acre lot for their existing dwelling and seeks to retain their existing gravel driveway onto Wilson Road providing access to the historic barn and their dwelling on the property. Reference is made to Exhibit 1 Driveway to Wilson Road, a historical narrative prepared by Gale Burns included in the application. Retaining the unique character of the barn and driveway is in harmony with the intent of the cluster objectives of 16.811.1.H, preservation of historic, archaeological and cultural features. Retention of the existing driveway will not

present a safety hazard. Since the owner has ample room for turning vehicles within the property, vehicles do not need to back into the public road.

6 in favor; 0 abstained; 0 opposed

168.1.6.I.5 - Disturbance within 100-foot wetlands buffer. Grassed swales and grassed underdrained soil filters are proposed within existing meadowlands. There will be no cutting of trees to construct stormwater practices. The runoff sheet flows to the grassed swales and is directed to the soil filter. The soil filter treats, cools and detains runoff before exiting to the wetlands. The location of the stormwater practices were chosen to preserve natural features to the extent possible and to meet MDEP Stormwater Law requirements.

5 in favor; 1 abstained (Grinnell); 0 opposed

Ms. Tuveson moved to continue review of the Pearson Meadows Cluster Subdivision for a period not to exceed 90 days, in order to finalize documents for final approval.

Ms. Grinnell seconded

Motion carried; 6 in favor; 0 opposed; 0 abstained

Break

ITEM 5 – Old Armory Way Mixed Use Development — Sketch Plan Review

Action: Review, schedule site walk if warranted, approve concept if in compliance with Town Code and provide direction to Applicant Owner and Applicant Ken McDavitt is requesting consideration for plans to construct a 3-unit residential condominium with 12 commercial boat slips at the shorefront located at 15 Old Armory Way, Tax Map 4, Lot 51, and within the Mixed Use Kittery Foreside Zone and the Shoreland and Commercial Fisheries/Maritime Activities Overlay Zones. Agent is Edward Brake, Attar Engineering, Inc., Eliot, Maine.

Ken McDavitt summarized the existing property use and the proposed development; identified parking requirements and locations for residential and slip use; parcel is 31,000 sf, where 25,000 is required in the MU-KF zone; parking for the slips are permitted within 75' of mean high water, but no closer than 25'.

Ms. Grinnell: Will condominium owner's be able to lease their personal slips? If so, parking could be an issue, with additional parking needed for leased slips. Will there be any waiver requests?

Mr. McDavitt: The slips could be leased if the owner's defined parking is used for those slips. No waiver requests, at this time. Municipal sewer is available.

Mr. Melanson: KPA review is needed and should be conducted concurrently.

Ms. Kalmar: Will MDEP shoreland changes to the ordinance impact this proposal?

Mr. DiMatteo: Shoreland zone requires 10,000 sf per dwelling unit which the parcel has; there are no MDEP changes to this.

Mr. Mylroie: The application is complete

Mr. Melanson moved to accept the sketch application for 15 Old Armory Way and schedule a site walk.

Ms. Grinnell seconded

Motion carried unanimously

Mr. Melanson explained KPA submittal requirements to the applicant.

Site Walk scheduled: June 5, 2014 at 5:00 p.m.

ITEM 6 – Shepard's Cove Subdivision – Modification to an Approved Plan – Completeness Review.

Action: Accept or Deny Plan Application, schedule a Public Hearing. Owner and applicant DLJ Corp., is requesting consideration of their plans to amend the previously approved 2004 subdivision plan, replacing a proposed 24 unit building with detached 5 single unit buildings at their Elderly Housing Facility located off Rogers Road, Tax Map 22, Lot 21, Residential-Urban Zone and Shoreland Overlay Zone. Agent is Lewis Chamberlain, P.E., Attar Engineering, Inc.

Mr. Chamberlain summarized the modification to the previously approved plan;

Ms. Driscoll: Was this project phased; will proposed development meet wetland setbacks; will the secondary road be used by this new housing area? Asked that staff confirm prior approval period for modification consideration.

Mr. Chamberlain: The project was phased and all other areas have been built except this last area; 100' setbacks have been met; two driveways access the secondary road, but feed into Shepard's Cove Road to exit onto Rogers Road; emergency exit would be used only in an emergency, through a break-through gate; the gate has been open when he has been on site; no waivers anticipated at this time; three underdrain, grassed soil filters will be used for stormwater management BMPs; there is a reduction of 11,000 sf in paved area from the previously approved plan.

Ms. Kalmar: Would like to see site archaeological information submitted at next review.

Mr. Melanson moved to accept the application modification as complete and schedule a site walk

Ms. Tuveson seconded

Motion carried unanimously

Discussion followed regarding the use of the emergency access road. Members agreed a site walk was not needed, at this time.

Mr. Melanson moved to schedule a public hearing on the modification to the Shepard's Cove subdivision approved plan.

Ms. Grinnell seconded

Motion carried unanimously

Public Hearing will be held on June 12, 2014 if the applicant is ready.

ITEM 7 –Pine Tree Plaza Site Plan – Modification to an Approved Plan – Completeness Review.

Action: Accept or Deny Plan Application, schedule a Public Hearing. Kenneth Lemont, owner and applicant (for Harrison E. Lemont Management Co., Inc.), requests approval to amend a previously approved Site Plan in order to replace an existing building (Curtis House) and attached ell with a new 2,450 sf building and increase the existing garage (by 364 sf). The property is located at 435 US Route 1 in the Mixed Use zone, Tax Map 50, Lot 8.

Ken Lemont, owner: Property has been in Lamont family since 1973 ; proposes to remove dilapidated building, build a new retail building in its place, and add 14 feet to an existing garage; this will enhance the property and Route 1 corridor; parking will be to the side of the building; landscaping will be provided; has addressed grading, existing lighting, sewer and water locations, etc.

Ms. Kalmar: Square foot calculations need to be included on the final plan; is a boundary survey required? The Board needs to direct the applicant.

Mr. DiMatteo: The Board can request any directions prior to the next review and public hearing.

Mr. Mylroie: The applicant can provide water runoff information prior to the public hearing.

Mr. Emerson moved to accept the application conditioned on the submittal of requirements noted in the plan review notes prior to the scheduling of a public hearing, and schedule a site walk.

Ms. Tuveson seconded

Motion carried: 6 in favor; 1 opposed (Grinnell); 0 abstentions

Site walk scheduled: June 10 at 6:00 p.m.

ITEM 8 – State Road Mixed Use Development — Sketch Plan Review

Action: Review, schedule site walk if warranted, approve Sketch Plan concept if in compliance with Town Code and provide direction to Applicant Owner HGL, LLC and Applicant Doug Greene, Building Works Company are requesting consideration of their plans for a mixed residential and commercial development at 42 State Road, Tax Map 3, Lots 5, 6 & 7 in the Business Local 1 Zone.

Doug Green

Mr. Emerson: In the BL-1 zone parking in front of a business is not permitted and the Board needs to determine if this requirement can be waived as there is ledge at the rear of the property where parking is directed.

Doug Greene: Offered additional submittals to the Board.

Mr. Emerson: Additional submittals are not permitted at the night of the meeting, and requested he present the information through testimony.

Mr. Greene: Summarized development request: demolish existing structures on the three parcels and construct a new building of approximately 47'x125', utilizing existing entrances and exits, with 6 residential units and commercial space. Requests Board feedback on the parking and building configuration on the site.

Ms. Driscoll: Love Lane accesses are of concern because of the traffic on Love Lane.

Ms. Tuveson: Concurs; concerned about site visibility from these exits onto Love Lane because of vegetation and Navy traffic. Ms. Grinnell concurred.

Mr. Emerson: Can the building be moved forward with parking in rear? The code requires new construction with parking in the rear.

Mr. Greene: There is a 10-12 foot rise where lots 6 and 7 converge, allowing for residential privacy.

Mr. Mylroie: The Board needs to provide guidance and a site walk would help members observe the conditions which are forcing this design.

Mr. Emerson: The application is not complete, but in order to provide direction to the applicant, a site walk is warranted though the application cannot be accepted at this time.

Site Walk scheduled: May 21, 2014 at 6:00 p.m.

Mr. Emerson moved to adjourn

Ms. Grinnell seconded

Motion carried by all members present

The Kittery Planning Board meeting of May 8, 2014 adjourned at 9:53 p.m.
Submitted by Jan Fisk, Recorder,

ATTACHMENT 1

Chris DiMatteo

From: Burke, Gabrielle [REDACTED]
Sent: Thursday, December 12, 2013 5:14 PM
To: Chris DiMatteo
Cc: v_trickett@ymail.com; dmorin17@maine.rr.com; Gmylroie; Jan Fisk
Subject: Re: Concerns/Questions Regarding Development Behind My House

Chris

I have a few initial concerns regarding the plans for the land behind 139 Brave Boat Harbor.

- 1) Has the council done a site visit. There is a lot of wetlands and wildlife in the area. Also a lot of ledge. It seems like it should be viewed before granting permission to erode it.
- 2) My house already has flooding issues. I am downhill from the adjacent land and I am concerned that I will experience an increase in flooding if the land is developed.
- 3) I worry that there is not enough of a buffer between the existing houses (3 abutting properties including mine). I feel like there will be a house right in my backyard.

I hope the planning board and Mr Watts will take these concerns into consideration.

Thank you,
Gabrielle Burke

ATTACHMENT 2

Chris DiMatteo

From: McNeill, Susan <[REDACTED]>

Sent: Thursday, May 08, 2014 3:12 PM

To: Chris DiMatteo

Subject: Proposed Pearson Meadow Cluster Subdivision

Dear Mr. DiMatteo:

I am an abutter of the above proposed subdivision which is on the agenda for tonight's planning board meeting. My neighbor, who is also an abutter, spoke to me this past weekend to let me know that her husband had spoken to a realtor and a couple that were looking at the land of the proposed subdivision and when asked about it, the realtor indicated that the subdivision was about a month from being passed. As I had not received notification of the planning board meeting I was concerned and came into the Town Hall. I read a copy of the plan review notes. There are changes to the applicant's submittal and one of them is *"the addition of a fence and trees along proposed Right-Of-Way to mitigate proximity of proposed roadway and existing abutting properties along Kings Court"*. As I expressed before, my house is only 27 ft from the rear boundary line of my lot and the proposed road is directly behind that with a curve that will cause headlights at night to shine directly into my house. I am unable to attend the meeting tonight but have a question. What will the height of the fence be and will mature trees be planted?

Another concern – there is a large hemlock on the stonewall that is 50-60 ft in height. I am worried that the construction of the road and development will damage the hemlock's root system and make the tree unsafe. Can an arborist be consulted and if the tree needs to be taken down, the cost will be the responsibility of the applicant? Since moving into my home I have had to remove quite a few trees which died as a result of damage done to them during the construction of my house.

Respectively,

Susan McNeill

2 Kings Court

Kittery ME